

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LYNN OXENBERG and
RONALD LEWIS

Plaintiffs,

v.

ALEX AZAR II, in his official capacity as the
Secretary of the Department of Health and
Human Services.

Defendant.

Case No. 2:20-cv-00738-CMR

ORDER

AND NOW, this ____ day of _____, 2020, upon consideration of Plaintiffs' Unconsented Motion For Leave to File Supplement to Motion for Summary Judgment, it is hereby ORDERED that Plaintiffs' Motion is GRANTED, and Plaintiffs' Supplement is deemed FILED.

BY THE COURT:

HONORABLE CYNTHIA M. RUFE
Judge, United States District Court

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**PLAINTIFFS' UNCONSENTED MOTION FOR LEAVE TO FILE
SUPPLEMENT TO MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Lynn Oxenberg and Ronald Lewis (“Plaintiffs”), by and through their undersigned counsel, hereby move for leave to file the attached Supplement to Motion for Summary Judgment/Opposition to Defendant’s Motion for Summary Judgment in light of developments in other similar cases and information recently revealed by Defendant Alex Azar II (the “Secretary”) that has bearing on the pending Motions for Summary Judgment before this Court. Specifically, at issue in the pending motions is the Secretary’s allegation that it would be “unfair” to apply collateral estoppel against the Secretary because the Secretary would have “to appear as a party in *over 400,000* Medicare claim appeals that are filed each year at the ALJ level.” *See* Dkt. #17 at 2-3 (emphasis in original). Yet, since the Secretary made that representation to the Court in May of this year, the Secretary has served interrogatory answers in other similar actions indicating that the number of ALJ appeals filed in FY2019 where the beneficiary was represented (and the Secretary, therefore, was permitted to participate) was just 2,602 –

nationwide. In other words, rather than appearing “as a party in over 400,000 Medicare claim appeals that are filed each year at the ALJ level,” the Secretary only appeared as a party in, at most, 0.65% of the amount previously represented in FY2019.

Accordingly, Plaintiffs request leave to file the attached five-page supplement that addresses this issue.

Dated: October 30, 2020

Respectfully submitted,

/s/ Nicholas R. Rodriguez

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CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of the foregoing Plaintiffs' Unconsented Motion for Leave to File Supplement to Motion for Summary Judgment was filed and served upon all counsel of record through the Court's CM/ECF.

Dated: October 30, 2020

/s/ Nicholas R. Rodriguez